IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.A. No.604 of 2006
Date of Decision:03.07.2007

The Commissioner of Income-tax, Patiala

.....Appellant

Vs.

M/s Sood Harvester, The Mall, Patiala

.....Respondent

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present:- Mr. Yogesh Putney, Advocate for the revenue.

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M.M.Kumar, J.

The revenue has challenged order dated 28.6.2006 passed by the Income Tax Appellate Tribunal, Chandigarh Bench `A', Chandigarh (`for brevity, `the Tribunal') in I.T.A. No.1064/Chandi/2005 in respect of assessment year 1983-84. It has been claimed that the following substantive questions of law would arise in this appeal filed under Section 260A of the Income Tax Act, 1961 (for short, `the Act'):-

"5.1 "Whether the Tribunal was justified in cancelling the penalty imposed under section 271(1)(c) by treating the inaction and/or lack of application of mind by the A.O. on a particular issue as the view (decision) of the Revenue and hold the same against it".

5.2 "Whether on the acts and in the circumstances of the case, the Tribunal was justified in not deciding the appeal on merits and dismissing the same on technical grounds and thus deviated from the guidelines set out by the Hon'ble Punjab and Haryana High Court in the case of CIT-I, Ludhiana Vs. M/s Abhishek Industries Ltd., Ludhiana in ITA No.110 of 2005 that **once the matter is before the Court or the Tribunal the same has to be**

decided on merits."

5.3 "Whether on the facts and in the circumstances of the case the action of the Tribunal amounts to non-exercise of appellate powers for it decided the issue without discussing the facts of the case".

It is undisputed that for the previous year relevant to the assessment year 1982-1983, on similar set of facts in the case of the assessee itself, the Assessing Officer did not consider it appropriate to initiate penalty proceedings under Section 271(1)(c) of the Act. On facts, it has also been admitted position that the sale of two combines by the assessee- firm to the partners has not been accepted and the assessment was framed for the assessment year 1981-1982 by treating the combines in the hands of the assessee- firm. It has come on record that the Assessing Officer was aware of the ownership of combines by the firm and still no penalty proceedings under Section 271(1)(c) of the Act were initiated. It is under these circumstances that the Tribunal has considered the question as to whether the assessee had concealed any income by disclosing the income in the hands of the individual partner instead of in the hands of the assessee- firm. It has been found as a fact that complete facts were made available to the Assessing Officer along with the return as well as during the course of assessment proceedings and, therefore, it has been held that it is a case of difference of opinion and not concealment of income. In addition, it has also been held that for the assessment year 1982-1983 no penalty proceedings under Section 271(1)(c) of the Act were initiated and once the department has accepted the order in the previous year then it has to act in the same fashion even for the subsequent years. In that regard, reliance has been placed on the judgment of Hon'ble the Supreme Court in the cases of **Berger Paints India Ltd. v. CIT**, (2004) 266 ITR 99 and **Radhasoami Satsang v. CIT,** (1991) 193 ITR 321. The Tribunal has also relied upon other judgments of various High Courts and concluded as under:-

> "On the basis of above referred decisions, it becomes abundantly clear that there must be a valid and just cause for the Revenue for taking different view in the subsequent year. In the present case, on similar facts, penalty proceedings for concealment of income had not been initiated for assessment

year 82-83. There is no reason for the revenue to take a different view for assessment year 83-84 on same set of facts and without assigning any reasons. We are, therefore, of the considered view that penalty u/s 271(1)(c) in this case is not justified. The same is accordingly cancelled."

Mr. Yogesh Putney, learned counsel for the revenue has submitted that the principles of res-judicata would not be attracted to the penalty proceedings initiated under Section 271(1)(c). In that regard, he has placed reliance on the observation made by Hon'ble the Supreme Court in **Radhasoami Satsang's case (supra)** and submitted that each assessment year has to be regarded as a unit and the decision taken in one year may not be applicable to the facts and circumstances obtaining in the following year. However, to the query raised by us, learned counsel has not been able to point out that there was any material difference between the facts obtaining in the assessment year 1982-1983 and the assessment year under consideration, i.e., 1983-1984. He has also not been able to point out any significant flaw in the findings recorded by the Tribunal holding that no income was concealed nor any incorrect particulars of the income were furnished.

After hearing learned counsel, we are of the considered view that the Tribunal has recorded categorical findings of fact that the assessee has disclosed complete facts before the Assessing Officer along with the return as well as during the course of assessment proceeding. We are further of the view that the Tribunal has followed the correct approach by concluding that it is a case of difference of opinion and not concealment of income. We also approve the reasoning adopted by the Tribunal that in the previous assessment year of 1982-1983, the facts were almost the same and still no penalty proceeding under Section 271(1)(c) were initiated. In such a situation, we find that view of Hon'ble the Supreme Court in **Berger Paints India Ltd.'s case (supra)** and **Radhasoami Satsang's case (supra)** would apply. The revenue has to maintain consistency and for the purpose of finality in all litigation, earlier decision on the same question would not be reopened unless some new facts are found with material difference in the subsequent years.

In view of the above, the appeal filed by the Revenue fails and

we find that there is no question of law much less the substantive question of law which may warrant admission of the appeal.

Dismissed.

(M.M.KUMAR)
JUDGE

July 03, 2007 **(AJAY KUMAR MITTAL)**
renu **JUDGE**